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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 704.

THE UNITED STATES, APPELLANTS,

vs.

THE CORLISS STEAM-ENGINE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1875.

Affirmed

Field

Waite

SUPREME COURT OF THE UNITED STATES.

No. 704.

THE UNITED STATES, APPELLANTS,

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THE CORLISS STEAM-ENGINE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Traverse	6	3
Final Judgment	7	4
Application for allowance of appeal	8	4
Order allowing same	8	4
Finding of facts by the court, and conclusion of law thereon	9	4
Opinion of the court	17	13
Request for additional findings by defendants and ruling of the court thereon	20	16
Certificate	34	20

1 In the United States Court of Claims.

CORLISS STEAM-ENGINE COMPANY *vs.* THE UNITED STATES. } No. 7156. Filed March 26, 1873. J. R.

Petition.

To the honorable the judges of the Court of Claims:

The petition of the Corliss Steam-Engine Company, of Providence, Rhode Island, respectfully showeth: That the said Corliss Steam-Engine Company, by its president, George H. Corliss, did, on the twenty-sixth day of October, A. D. one thousand eight hundred and sixty-three, enter into a contract with the Navy Department, acting for and on behalf of the United States, by which the said Corliss Steam-Engine Company did then and there undertake and agree to and with the United States, to build and erect, at the expense and risk of said company, in a secure and finished state, fit in every respect for sea-service, in the United States steamer Pompanoosuc, at the Charlestown navy-yard, all the machinery necessary to the propulsion of the same, by a pair of geared screw-engines of one hundred inches diameter of cylinder, and a stroke of piston of four feet, together with boilers containing in the aggregate eleven hundred and twenty-eight square feet of grate-surface, and twenty-eight thousand three hundred square feet of
2 heating surface, together with all necessary tools and appurtenances. The said engines, machinery, &c., to be finished and completed on board said vessel within twelve months from date thereof, provided the said vessel should be placed at the command of said Corliss Steam-Engine Company by the United States, within six months from the date of said contract.

And on the thirteenth day of November, anno Domini one thousand eight hundred and sixty-three, the said Corliss Steam-Engine Company, by its president, George H. Corliss, entered into another contract with the said Navy Department, acting for and on behalf of the United States, by which the said company bound itself to build and erect, at its own expense and risk, in a secure and finished state, fit in every respect for sea-service, in the United States steamer Illinois, all the machinery necessary to the propulsion of the same by a pair of back-acting engines, of sixty (60) inches diameter of cylinder and three feet stroke of piston, together with the boilers, containing five hundred and forty-six (546) square feet of grate surface, and two superheating apparatuses, together with all appurtenances, coal-bunkers, instruments, tools, and spare pieces that may be required for proper working, according to the usage of the naval service, according to certain specifications and lists attached to said contracts.

The said last-mentioned engines and machinery to be completed on board said vessel within twelve months from the making of said contract, provided the said vessel should be placed at the command of the said company within nine months from the making of said contract.

That by direction and consent of the United States, acting through and by the Secretary of the Navy, the said steamers never have been placed at the command of the said contractors, and were never in any condition to receive the said engines, machinery, and appurtenances mentioned in the said recited contracts. That on the 8th day of May, 1869, an order was issued by the United States and directed to the

3 said contractors, requiring them to suspend work upon said contracts. That on the 14th day of May, 1869, the said engines, boilers, and machinery, and appurtenances, mentioned in said contracts being in an unfinished condition, and a large sum being due to said contractors for work and materials pertaining to said engines and machinery, said contractors did propose and offer, on said 14th day of May, to compromise and settle with the United States, through the Secretary of the Navy, and to deliver to the United States the said engines, boilers, machinery, and appurtenances, at the Charlestown navy-yard, in their then unfinished condition, for the sum of two hundred and fifty-nine thousand and sixty-eight dollars and forty cents, over and above the several sums and amounts theretofore paid them on said contracts in the progress of the work; and the said Corliss Steam-Engine Company to surrender to the United States, and cancel and annul their said contracts.

And the said offer of settlement and compromise having been duly examined and considered by the United States, acting by the Secretary of the Navy, was in due form of law accepted and acceded to by the United States.

And the said Corliss Steam Engine Company having delivered the said engines, boilers, machinery, and appurtenances at the Charlestown navy-yard as agreed upon, and having further agreed to an abatement or deduction of one thousand three hundred and eighty dollars and forty cents, on account of five hundred and fifty-two tubes not furnished; and thereupon, in consideration of said compromise and settlement, the said Corliss Steam-Engine Company, acting by its president, George H. Corliss, did give up and surrender to the United States, and agree that the same should be cancelled and annulled, the aforesaid contracts and all the rights, interests, and benefits accruing under the same. And the same were then and there cancelled, annulled, and surrendered to the United States.

4 And in consideration of such surrender and cancellation, the said United States, acting by, through, and under orders and direction of the Secretary of the Navy, who was then and there acting for and on behalf of the President of the United States, did make and cause to be made and delivered to the said Corliss Steam-Engine Company the following certificate of settlement and compromise, to wit:

NAVY DEPARTMENT,
BUREAU OF STEAM-ENGINEERING,
December 8, 1869.

This certifies that the Corliss Steam-Engine Company, of Providence, Rhode Island, having made, in its letter of May 14, 1869, to the Navy Department an offer to settle and cancel the contracts made by and between the Bureau of Steam-Engineering and the Corliss Steam-Engine Company of October 26, 1863, and November 13, 1863, for a pair of 100 by 48 engines, boilers, and appurtenances, and a pair of 60 by 36 engines, boilers, and appurtenances, on the following terms, viz: To deliver the engines, boilers, and appurtenances at the Charlestown navy-yard in their then unfinished condition for the sum of two hundred and fifty-nine thousand and sixty-eight dollars and forty cents, ($259,068.40,) and the offer of the company having been accepted by the Bureau of Steam-Engineering, (by order of the Department,) by the Bureau's letter of May 20, 1869, and the engines, boiler, and appurtenances embraced in the two contracts above named having been delivered at the Charlestown navy-yard in an unfinished condition, as agreed

upon between the Corliss Steam-Engine Company and the Bureau of Steam-Engineering, except five hundred and fifty-two (552) tubes, amounting to thirteen hundred and eighty dollars and forty cents, ($1,380.40,) which being deducted, entitles the Corliss Steam-Engine Company to the payment of the sum of two hundred and fifty-seven thousand six hundred and eighty-eight dollars ($257,688) due on the first day of October last, and payment will be made when the United States Congress shall make the necessary appropriations for this Bureau.

J. W. KING,
Chief Engineer United States Navy,
Chief of Bureau of Steam-Engineering.

5 And the said claimants, the Corliss Steam-Engine Company, aver that the said sum of two hundred and fifty-seven thousand six hundred and eighty-eight dollars became and was justly due and owing to it from the United States, together with interest thereon, from the first day of October, A. D. 1869. And they therefore claim and pray your honors to render a judgment in their favor for the said sum of two hundred and fifty-seven thousand six hundred and eighty-eight dollars, with interest from said first day of October, A. D. 1869.

And they will pray, &c.

CORLISS STEAM-ENGINE COMPANY.
GEORGE H. CORLISS, *President.*

Attorney: JOS. CASEY,
Washington, D. C.

Claimants:
Providence, R I.

STATE OF RHODE ISLAND,
City of Providence, ss:

George H. Corliss, president of the Corliss Steam-Engine Company, being duly sworn, says that no assignment or transfer of said claim has been made, or of any part thereof, or any interest therein; that the claimants are justly entitled to the amount claimed in the foregoing petition from the United States, after allowing all just credits and offsets; and that he believes the facts stated in said petition are true.

GEO. H. CORLISS,
President.

Subscribed and sworn to before me, this 24th day of March, A. D. 1873.

SAML. W. PECKHAM,
United States Commissioner.

6 In the Court of Claims of the United States, December term, A. D. 1872.

CORLISS STEAM-ENGINE CO. *vs.* THE UNITED STATES. } No. 7156.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of two hundred and fifty-seven thousand six hundred and eighty-eight dollars, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

Filed May 20, 1873.

7 In the Court of Claims.

THE CORLISS STEAM-ENGINE COMPANY
vs.
THE UNITED STATES. } 7156.

At a Court of Claims held at the Capitol, in the city of Washington, the 17th day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Corliss Steam-Engine Company, claimant, do have and recover of and from the United States the sum of two hundred and fifty-seven thousand six hundred and eighty-eight dollars ($257,688.00.)

By the court.

A true copy of record.

8 In the Court of Claims of the United States, Dec. term, 1874.

THE CORLISS STEAM-ENGINE COMPANY
vs.
THE UNITED STATES. } No. 7156.

From the judgment rendered in the above-entitled cause, on May 17, 1875, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Asst. Atty. General.

Filed August 14, 1875.

AT CHAMBERS.

Allowed:

C. D. DRAKE, *C. J.*

9 United States Court of Claims.

CORLISS STEAM-ENGINE COMPANY
vs.
UNITED STATES.

FINDING OF FACTS.

In this case the court, upon the evidence, finds the facts to be as follows:

I. On the 26th of October, 1863, a contract in writing was entered into

between the claimant and its sureties, parties of the first part, and the Chief of the Bureau of Steam-Engineering, Navy Department, acting in the name of the Secretary of the Navy, for and in behalf of the United States, party of the second part, whereby the parties of the first part covenanted and agreed to build and erect, at their expense and risk, in a secure and finished state, fit in every respect for sea-service, in the United States steamer Pampanoosuc, at the Charlestown navy-yard, all the machinery necessary to the propulsion of the same by a pair of geared screw-engines of one hundred inches diameter of cylinder, and a stroke of piston of four feet, together with boilers, containing, in the aggregate, 1,128 square feet of grate-surface and 28,300 square feet of heating-surface, together with all appurtenances, coal-bunkers, instruments, tools, and spare pieces that might be required for proper working, according to the usages of the naval service.

II. On the 13th of November, 1863, a certain other contract in writing was entered into between the same parties, whereby the claimant and its sureties, parties of the first part, covenanted and agreed to build and erect, at their expense and risk, in a secure and finished state, fit in every respect for sea-service, in the United States steamer Illinois, all the machinery necessary to the propulsion of the same by a pair of back-acting engines of sixty inches diameter of cylinder, and three feet stroke of piston, together with the boilers, containing 546 square feet of grate surface, and two superheating-apparatus, together with all appurtenances, coal-bunkers, instruments, tools, and spare pieces that might be required for proper working according to the usages of the naval service.

III. Each of said contracts contained, among others, the following stipulations:

"The said parties of the first part further agree that the Secretary of the Navy shall have the right to appoint a person to superintend the construction of the machinery, who shall have power to inspect it at all times, and to peremptorily reject, in any stage of its progress, any materials or articles, or any piece or part, which he may consider defective, either in quality of material or of workmanship, or in propriety of detail; and that they will provide the said person suitable and convenient office-room, and afford him satisfactory facilities for superintending the work.

"And the said parties of the first part do further agree that the said machinery, appurtenances, coal-bunkers, instruments, tools, and spare pieces, complete in all respects, and ready for continuous sea-service, shall be on board the vessel within twelve (12) months from the date of this contract, provided it be placed at their command within six (6) months from the date of this contract, unless prevented by the act of the Government, or by circumstances beyond the control of the parties of the first part; it being understood that by 'circumstances beyond the control of the parties of the first part,' is meant accidents by fire or water to the machinery on the premises of the parties of the first part, or while being erected in the vessel; but delays by persons furnishing the parties of the first part with stock or material, or caused by loss of castings or forgings condemned for any reason whatever, are not within the meaning of the phrase 'circumstances beyond the control of the parties of the first part.'

"And if the vessel be not placed at the command of the said parties of the first part within the six (6) months aforesaid from the date of this contract, they, the said parties of the first part, do further agree that, within six (6) months from the time that they shall be notified that the

vessel is at their command, they will have completed the said machinery, appurtenances, coal-bunkers, and spare pieces, on board, in all respects ready for continuous sea-service, unless prevented by the act of the Government, or by circumstances beyond the control of the parties of the first part.

"And it is further agreed and mutually understood that, in case the machinery shall not be completed ready for erection in the vessel at the expiration of the said six (6) months from date of contract, or shall not be fully completed in the vessel ready for sea-service at the expiration of the said six (6) months after the said parties of the first part are notified that the vessel is at their command, the said party of the second part is authorized to take possession of said machinery, and complete it at the expense of the said parties of the first part."

IV. The claimant proceeded to construct the engines, boilers, and appurtenances called for by said contracts, and continued therein until stopped by the order from the Navy Department hereinafter set forth under Finding VI. All the work done by the claimant in and about said construction was done under the supervision of an inspector appointed by the Navy Department, who made to the Department detailed reports of the progress of the work; at first, semi-monthly; and afterward, monthly, beginning on the 15th of June, 1864, and ending on the 1st of March, 1869.

V. On the 30th of March, 1869, the Secretary of the Navy ordered a board, consisting of Captain J. H. Strong and Chief Engineers B. F. Garvin and Edward Fithian, to examine and estimate upon the unfinished machinery under contract at the several engine establishments, with a view to obtain a release from the contracts, if, in the opinion of the board, such a release would be for the interest of the Government.

The board made a report on the 26th of April, 1869, as follows:

"NAVY-YARD, NEW YORK, *April* 26, 1869.

"SIR: In obedience to the order of the honorable Secretary of the Navy, of the 30th of March, to examine and estimate upon the unfinished steam-machinery and tools now being constructed at different establishments, with a view of obtaining a release from the contracts, if, in our opinion, such a release would be for the interest of the Government, we have respectfully to report:

"The following is a list of the engines and the amounts due on contracts and reservations upon completion:

Daniel McLeod, balance on reservation for one pair 60-inch by 36 inch engines	$30,000 00
John Roach, balance on reservation for three pairs 60-inch by 36-inch engines	90,000 00
11 Corliss Steam-Engine Company's balance on contract for one pair 60-inch by 36-inch engines	100,000 00
Extra bills on same	11,549 15
Corliss Steam-Engine Company's balance due on contract for one pair 100-inch engines	140,000 00
Extra bills on same	7,068 25
	378,617 40

"In addition to this amount, there should be added to complete the contracts, for extra work, in addition to that already charged, which would have to be done on the 100-inch engines in the course of erection,

which, in proportion to those already finished, would amount to twenty-five thousand dollars, ($25,000;) also an extra allowance for transportation to the Corliss Steam-Engine Company, of fifteen thousand dollars ($15,000) for the 60-inch by 36-inch engines, and thirty thousand dollars ($30,000) for the 100-inch engines; making a total of four hundred and forty-nine thousand and sixty-eight dollars and forty cents ($449,068.40) to complete the contracts.

"We estimate the cost to the contractors to complete the contracts to be the amount now due them, except upon the 60-inch by 36-inch engines at the Corliss Steam-Engine Company, which would cost about fifteen thousand dollars, ($15,000.)

"Should these contracts be completed as far as they can be, with a view to storing them in navy-yards, there would be a deduction on each of the 60-inch by 36-inch engines of about fifteen thousand dollars, ($15,000,) and upon the 100-inch engine of about fifty thousand dollars, ($50,000,) making a total reduction of one hundred and twenty-five thousand dollars, ($125,000,) leaving a balance, after deducting the cost of extra work in erecting the 100-inch engine, of two hundred and ninety-nine thousand and sixty-eight dollars and forty cents, ($299,068.40,) to be paid by the Government for storing them.

"If the Department should decide to dispose of these engines in their present condition, we estimate as follows:

"The 60 inch by 36-inch engines, taking their weight as old material, should bring about thirty-seven thousand dollars, ($37,000.)

"We have received propositions from the different contractors, the best being from Mr. John Roach, of the Morgan Iron-Works, in New York, who, being engaged in the marine-engine business, would enable him, at some future time, to use some of the smaller detail parts, and he will allow forty thousand dollars ($40,000) for each of them, in addition to the balance due on reservation. We are of the opinion that forty-five thousand dollars ($45,000) could be obtained for each at the establishments in New York and Brooklyn, and for the one at the Corliss Steam-Engine Company's establishment, being further away from the market, thirty-five thousand dollars, ($35,000.) In the same proportion by weight, the 100-inch engines should be valued at eighty-two thousand dollars, ($82,000,) making a total of two hundred and ninety-seven thousand dollars ($297,000) paid back to the Government. This, added to the outlay required to complete the engines for storing, amounts to five hundred and ninety-six thousand and sixty-eight dollars and forty cents, ($596,068.40.)

"From this amount must be deducted the balance due the Corliss Steam-Engine Company on contract for the 60-inch by 36-inch engine, and the amount of extra bills now pending, less the deduction to be made in case the 60-inch by 36-inch engine should be stored,
12 amounting to one hundred and four thousand and sixty-eight dollars and forty cents, ($104,068.40,) leaving a balance of four hundred and ninety-two thousand dollars ($492,000) retained by the Government by disposing of the engines in their present condition.

"We have visited the establishments now having contracts for the building of tools, and respectfully state as follows:

"At the Providence Steam-Engine Company the tools are in various stages of progression. There are bolt-forging machines, with water-front forges finished, to the amount of twenty-two thousand eight hundred dollars, ($22,800.)

"There are six nut-forging machines, amounting to sixty thousand

dollars, ($60,000,) that will require about eight thousand dollars ($8,000) to complete.

"There are other machines, amounting to nine thousand seven hundred and twenty-five dollars, ($9,725,) with the drawings and some of the patterns made, viz:

One cast-iron emery-wheel stand	$975
One steam-engine for Charlestown navy-yard	6,000
One machine for making rivets and stay-bolts	2,750
	9,725

"The whole amount of the contract is $92,525, upon which a payment has been made of $40,000. The contractor states that the bolt and nut forging machines are patented articles, and, as he has the right to use them only in navy-yards, they would be of no use to him, except as old material, and makes the following offer: He will allow for them $5,500, and deduct $8,000 for non-finishing for the machines having the drawings and some of the patterns made; he agrees to cancel the contract for thirty per cent. of the price named for them, making a deduction of $20,307.50. Notwithstanding the very small demand for this kind of tool of this size, and the difficulty in disposing of them, even should the restrictions of the patent be removed, we think a better settlement could be obtained upon the following basis, which we respectfully suggest:

"That he be allowed a profit of thirty per cent. upon the whole contract and the amount expended on the tools, for which latter amount he shall allow the Government a percentage agreed upon, and retain the tools.

"Taking into consideration all the unfavorable circumstances, they should be worth twenty-five per cent. of the amount expended. The result would be as follows:

Whole amount of contract	$92,525 00
Profits at thirty per cent	27,757 50
Amount expended on tools	49,960 00
Twenty-five per cent. on amount expended	12,490 00
Payment received on contract	40,000 00

"This would make a deduction of $25,227.50.

"The tools at the establishment of John Roach are in various stages of progression. One lot, amounting to $69,931, are finished ready for delivery. Another, amounting to $226,614.67, are more than half completed, there being made for them the drawings, patterns, and over eight hundred thousand pounds of iron and brass castings, and wrought-iron forgings, and to complete them would cost about $72,000, and upon the remainder there have been expended $32,000.

13 "The whole contract amounts to $409,000, being about $24,000 more than is shown by schedule furnished by the Department. This increase is in consequence of alterations being made in the size of some of the tools, after the contract was made, by orders of the Bureau of Steam-Engineering, which was shown. A payment on account of $109,500 has been made. The contractor offers to cancel the contract on the following terms:

"That he should receive a profit of twenty-five per cent. on the whole contract, and the amount expended on the tools, and let the Government take them as they are, or he will allow the Government fifty per cent. on the amount expended and retain them, viz:

Whole amount of contract	$409,000 00
Profits at 25 per cent	102,250 00
Amount expended on tools at 25 per cent	182,409 25
Fifty per cent. on amount expended	91,204 61
Payment received on contract	109,500 00

"This would leave a balance due the contractor of $84,504, making a difference of about $215,000.

"We are of the opinion that twenty-five per cent. would be a fair profit, which would reduce the amount due the contractor to about $71,000.

"The tool at the Lowell Machine Company's establishment is a horizontal boring-lathe, to swing twelve feet diameter, designed for boring cylinders. The contract-price is $15,000, upon which a payment has been made of $7,500. We estimate that, at the date of our visit, it would cost about $1,500 to finish it. The contractor would make no proposition for canceling, the contractor stating that it was not a tool that he could sell.

"The board are of opinion that cylinders of a diameter requiring a tool of this size should be bored in a perpendicular position and not horizontally, and consequently useless for the purpose for which it was intended. We, therefore, recommend it to be disposed of on the most advantageous terms that can be obtained.

"The board, after a careful examination of the engines and tools now being constructed, and considering the probable wants of the service, have come to the following conclusions, which are respectfully submitted:

"There are seven pair of these 60-inch by 36-inch engines with boilers stored in the different navy-yards at present, which, should they be used, will perhaps be as many as the Government will require for some years to come.

"There will, doubtless, be many improvements made in the construction of steam-engines before they will be required, which, combined with their objectionable features, make it reasonable to suppose that they will never be used. Engines can now be built, as we are informed, developing the same power, the same speed guaranteed, taking up less room, and about one-third less in weight, for one hundred and fifty thousand dollars; and, as prices are not likely to advance, we are of the opinion that the Government can, at any future time, have engines built of an improved design on advantageous terms.

"These engines would be unsalable for the merchant-marine service, for the reasons that other plans are being adopted, and on account of their weight and the room they occupy, and for the reason that we are not aware that there is a steamship now being built in the United States that would require engines of this size.

14 "The same objections apply to the 100-inch engines. To complete these engines for storing, and the labor of moving and taking care of them, would cost a larger amount of money, for which, perhaps, no return would ever be realized, as it will, no doubt, be to the best interest of the Government to encourage any new improvements there may be made. We are of the opinion that it would be for the best interest of the Government to dispose of them on the most advantageous terms offered; and, taking into consideration the condition of the market, their actual value as old material, and the cost of breaking up and transportation, we think better terms should be obtained from the contractors than from other parties.

"With regard to the tools, we have to say they are tools of the first class, being built on the most improved plans that could be obtained from the best establishments in Europe, and would be invaluable to the Government if the wants of the service required them; but the navy-yard shops are now well supplied for doing any work that may be required for many years, and they would, therefore, particularly the larger class, remain comparatively idle. They would be unsalable, as they are mostly of a class and size that no private establishment in this country has any use for, particularly at the present time, and we do not think that they would bring now thirty per cent. of their value if sold to other parties.

"Should they all be finished and delivered, it would be difficult to find room for them in the present shops of the navy-yards. If the Department decides that these tools are not required, and desire to cancel the contracts, we think the contractors are disposed to deal upon favorable terms; and, although there would be some losses sustained, we are of the opinion that in the end they would be overbalanced by purchasing such tools as may be required at any future time, as the market is falling. Any disposition the Department may desire to make can probably be made to a better advantage at the present time, as, owing to the present condition of business, the prices are likely to continue to decline.

"We are, very respectfully, your obedient servants,

"J. H. STRONG,
"*Captain United States Navy and President of Board.*
"BENJ. F. GARVIN,
"*Chief Engineer.*
"EDWIN FITHIAN,
"*Chief Engineer.*

"Hon. A. E. BORIE,
"*Secretary of the Navy, Washington, D. C.*"

VI. On the 8th of May, 1869, the following letter was addressed by the Chief of said Bureau to the claimant:

"NAVY DEPARTMENT, BUREAU OF STEAM-ENGINEERING,
"*May* 8, 1869.

"SIR: The Department has decided not to complete the engines and boilers being constructed by you, under contract with this Bureau. No further progress will therefore be made with the work.

"Respectfully,

"J. W. KING,
"*Chief of Bureau.*

"GEORGE H. CORLISS,
"*Corliss Steam-Engine Company, Providence, R. I.*"

15 VII. On the 14th of May, 1869, the claimant addressed the following letter to the Secretary of the Navy:

"WASHINGTON, D. C., *May* 14, 1869.

"SIR: The undersigned, contractors for steam-machinery known as the 100-inch by 48-inch, and 60-inch by 36-inch, would respectfully represent that said machinery has for a long time been ready for erection upon the vessels designated by the contracts for the same, and that the said vessels have been in no proper condition to receive said machinery.

"The two contracts amount to $730,000 for the 100-inch and $415,000 for the 60-inch, and we have our bills pending for extra work ordered

by the Department, amounting to $19,068.40, making in all the sum of $1,164,068.40, upon which we have received $860,000, leaving a balance of $304,068.40, which we now propose to settle, and cancel the contracts, by taking back all the machinery constructed by us under the said contracts, and the sum of $150,000. Or we will deliver the machinery at the navy-yard in Charlestown in its present state of completion, for $45,000 less than the price fixed upon by the contracts. Of this sum we deduct $15,000 on account of the 60-inch, and $30,000 on account of the 100-inch contracts. The two contracts amount to $415,000, plus $730,000=$1,145,000, upon which we have received $860,000, leaving $285,000 which would be due on completion.

"We have done extra work ordered by the Department, for which our bills are pending, amounting to $19,068.40; this added to the $285,000 due on contracts, makes $304,068.40, from which we propose to deduct $45,000, as above stated; leaving $259,068.40, which will be due when the work is delivered at the navy-yard in Charlestown.

"All of which is respectfully submitted by the

"CORLISS STEAM-ENGINE CO.,
"GEO. H. CORLISS, *President.*

"Hon. E. A. BORIE,
"*Secretary of the Navy.*"

VIII. On the 20th of May, 1869, the following letter was addressed by the Chief of said Bureau to the claimant

"BUREAU OF STEAM-ENGINEERING, *May* 20, 1869.

"SIR: Your letter to the Department, of the 14th instant, in relation to the settlement of your contracts for one pair 100-inch and one pair 60-inch engines, has been referred to this Bureau.

"The Department has decided to have you deliver the 100-inch and 60 inch engines, boilers, and appurtenances at the Charlestown navy-yard, on the terms proposed in your letter of the 14th instant, viz, balance unpaid on the two contracts, including items for transportation to the Charlestown navy-yard, and items for extra material and labor authorized, is $304,068.40, less deduction in consideration of their not being finished and erected in the vessel, $45,000, leaving balance in settlement of the two contracts, $259,068.40.

"In consequence of the very limited appropriations of this Bureau, only one payment will be made, and that on delivery of the machinery, &c., at the Charlestown navy-yard; the balance cannot be paid until Congress makes further appropriation, but a certificate for the amount due will be given you.

"Very respectfully,

"J. W. KING,
"*Chief of Bureau.*

"GEO. H. CORLISS,
"*Corliss Steam-Engine Company, Providence, R. I.*"

16 IX. Up to the time of the correspondence set forth in the next preceding three findings, no vessel had been provided by the Navy Department for the reception of the aforesaid engines, boilers, and appurtenances.

X. On the 20th of May, 1869, the said Chief of Bureau ordered a chief engineer of the Navy to inform the Bureau of the then present condition and progress in construction of the said engines, boilers, and appurtenances, and also what parts then remained uncompleted under the terms of the aforesaid contracts.

In obedience to said order, the chief engineer, on the 26th of May, 1869, made a detailed report in reference to said engines, boilers, and appurtenances, whereby the Navy Department was fully and correctly informed of the then condition of each item thereof, whether completed or unfinished, or not commenced.

XI. When this report was made the boilers called for in the contracts were completed, with all valves attached, and the engines were about nine-tenths completed.

XII. In accordance with the terms of the aforesaid letter of the said Chief of Bureau, of May 20, 1869, the claimant proceeded to deliver the said engines, boilers, and appurtenances in their then condition, whether of forwardness or completeness, at the Charlestown navy-yard, and the delivery thereof was accomplished on or before November 13, 1869; and on the 15th of that month the commandant of said navy-yard transmitted to the Navy Department an inventory of all that was so delivered; and the property so delivered has ever since remained in the possession of the Government; and no part of it has ever been returned or tendered by the Government to the claimant.

XIII. On the 8th day of December, 1869, the said Chief of Bureau, by the authority of the Secretary of the Navy, signed and delivered to the claimant the paper set forth in claimant's petition, in the words and figures following, to wit:

"NAVY DEPARTMENT,
"BUREAU OF STEAM-ENGINEERING,
"*Dec'b'r 8th*, 1869.

"This certifies that the Corliss Steam-Engine Co., of Providence, R. I., having made, in its letter of May 14th, 1869, to the Navy Department an offer to settle and cancel the contract made by and between the Bureau of Steam-Engineering and the Corliss Steam-Engine Co., of Oct. 26th, 1863, and Nov'b'r 13th, 1863, for a pair of 100″ x 48″ engines, boilers, and appurtenances, and a pair 60″ x 36″ engines, boilers, and appurtenances, on the following terms, viz: to deliver the engines, boilers, and appurtenances at the Charlestown navy-yard, in their then unfinished condition, for the sum of two hundred fifty-nine thousand and sixty-eight dollars forty cents, ($259,068.40,) and the offer of the company having been accepted by the Bureau of Steam-Engineering (by order of the Department) by the Bureau's letter of May 20th, 1869, and the engines, boilers, and appurtenances embraced in the two contracts above named having been delivered at the Charlestown navy-yard, in an unfinished condition, as agreed upon between the Corliss Steam-Engine Co. and the Bureau of Steam-Engineering, except five hundred fifty-two (552) tubes, amounting to thirteen hundred eighty dollars forty cents, ($1,380.40,) which being deducted, entitles the Corliss Steam-Engine Co. to the payment of the sum of two hundred fifty-seven thousand six hundred eighty-eight ($257,688.00) dollars, due on the
17 first day of October last, and payment will be made when the U. S. Congress shall make the necessary appropriation for this Bureau.

"J. W. KING,
"*Chief of Bureau.*"

XIV. On the 10th of March, 1870, the said Chief of Bureau addressed the following letter to the claimant:

"NAVY DEPARTMENT, BUREAU OF STEAM-ENGINEERING,
March 10, 1870.

"SIR: A board having been ordered to examine your claims for pay-

ment, under contracts made with this Bureau, you are requested to return the certificate of indebtedness, given under date of December 8, 1869.

"Respectfully,

"J. W. KING,
"*Chief of Bureau.*

"GEORGE H. CORLISS,
"*Washington, D. C.*"

XV. On the 11th of March, 1870, the claimant addressed to said Chief of Bureau the following letter:

"THE ARLINGTON,
"*Washington, D. C., March* 11, 1870.

"DEAR SIR: Referring to yours of the 10th instant, I beg leave respectfully to decline your request to return the certificate of indebtedness given under date of December 8, 1869. And I submit that a most reasonable condition to a re-opening of the question of my 'claims for payment under contracts made with the Bureau' would be a 'return' of the engines, boilers, and appurtenances (weighing some fifteen hundred tons) from the navy-yard in Charlestown to the works of the Corliss Steam-Engine Company, in Providence, in the same condition as they were when the arrangement of May, 1869, was consummated 'by order of the Department,' whereby the original contracts for this machinery were canceled, and the terms of settlement for said machinery were all arranged, and since been fulfilled on the part of the Corliss Steam-Engine Company, as is fully and officially confirmed by said certificate.

"Yours, &c.,

"GEO. H. CORLISS,
"*President Corliss Steam-Engine Company.*

"J. W. KING, Esq.,
"*Chief of Bureau of Steam-Engineering, Washington, D. C.*"

Upon the foregoing facts, the conclusion of law is that the claimant is entitled to recover $257,688, upon the grounds set forth in the accompanying opinion.

DRAKE, Ch. J., delivered the opinion of the court:

The claimant had two contracts with the Navy Department for the construction of steam-engines and appurtenances, one dated October 26, 1863, the other dated November 13, 1863, from which dates, until May 8, 1869, work was prosecuted by the claimant upon the engines and appurtenances.

18 From the 15th of June, 1864, till the 1st of March, 1869, all the work was done under the supervision of an inspector appointed by the Navy Department, who made to the Department detailed reports of the progress of the work; at first semi-monthly, a .d afterward monthly.

In March, 1869, the Navy Department appointed a board of officers of the Navy to examine and estimate upon the unfinished machinery under contract at different establishments, with a view of obtaining a release from the contracts, if, in their opinion, such a release would be for the interest of the Government. This board, on the 26th of April,

1869, made a full report on the subject, which is set out in the finding of facts.

Thereupon, and doubtless in consequence of that report, the Department, on the 8th of May, 1869, notified the claimant that it had decided not to complete the engines and boilers, upon the construction of which the claimant was then engaged, and that no further progress would be made with the work.

The claimant then made to the Department a written proposition, in the alternative, either to take back all the machinery and receive $150,000, or to deliver it all, in its then incomplete condition, at the Charlestown navy-yard for $259,068.40, payable on the delivery there.

On the 20th of May, 1869, the Department notified the claimant to deliver the engines, boilers, and appurtenances at that yard, on the terms specified in said proposition; and recognizing $259,068.40 as the "balance in settlement of the two contracts," stated that in consequence of the very limited appropriations * * * only one payment would be made, and that would be on the delivery of the machinery, &c., at the Charlestown navy-yard; and that the balance could not be paid until Congress should make further appropriation, but a certificate for the amount due would be given the claimant.

The Department on the same day that this notice was given, ordered a chief engineer of the Navy to inform it of the then present condition and progress in construction of the said engines, boilers, and appurtenances, and also what parts then remained uncompleted under the terms of the contracts; and on the 26th of May that officer made a detailed report, whereby the Department was fully and correctly informed of the then condition of each item of the engines, &c., whether completed, or unfinished, or not commenced.

The claimant proceeded to deliver the engines, boilers, and appurtenances at the Charlestown navy-yard, where they have ever since remained in the possession of the Government, no part of them having ever been returned or tendered by the Government to the claimant.

On the 8th of December, 1869, the following certificate was issued to the claimant:

"NAVY DEPARTMENT,
"BUREAU OF STEAM-ENGINEERING,
"*Dec'b'r 8th*, 1869.

"This certifies that the Corliss Steam-Engine Co., of Providence, R. I., having made, in its letter of May 14th, 1869, to the Navy Department, an offer to settle and cancel the contract made by and between the Bureau of Steam Engineering and the Corliss Steam-Engine Co., of Oct. 26th, 1863, and Nov'b'r 13th, 1863, for a pair 100″ x 48″ engines, boilers, and appurtenances, and a pair of 60″ x 36″ engines, boilers, and appurtenances, on the following terms, viz, to deliver the engines, boilers, and appurtenances at the Charlestown navy-yard, in their then unfinished condition, for the sum of two hundred fifty-nine
19 thousand and sixty-eight dollars forty cents, ($259,068.40,) and the offer of the company having been accepted by the Bureau of Steam-Engineering (by order of the Department) by the Bureau's letter of May 20th, 1869, and the engines, boilers, and appurtenances embraced in the two contracts above named having been delivered at the Charlestown navy-yard in an unfinished condition, as agreed upon between the Corliss Steam-Engine Co. and the Bureau of Steam-Engineering, except five hundred fifty-two (552) tubes, amounting to thirteen hundred eighty dollars forty cents, ($1,380.40,) which being deducted,

entitles the Corliss Steam-Engine Co. to the payment of the sum of two hundred fifty-seven thousand six hundred eighty-eight ($257,688.00) dollars, due on the first day of October last, and payment will be made when the U. S. Congress shall make the necessary appropriation for this Bureau.

"J. W. KING,
"*Chief of Bureau.*"

On the 10th of March, 1870, the Navy Department informed the claimant that a board had been ordered to examine its claims for payment under the aforesaid contracts, and requested the return of said certificate; which request was declined, in the following letter:

"THE ARLINGTON,
"*Washington, D. C., March* 11, 1870.

"DEAR SIR: Referring to yours of the 10th instant, I beg leave respectfully to decline your request to return the certificate of indebtedness given under date of December 8, 1869. And I submit that a most reasonable condition to a re-opening of the question of my 'claims for payment under contracts made with the Bureau' would be a 'return' of the engines, boilers, and appurtenances (weighing some fifteen hundred tons) from the navy-yard in Charlestown to the works of the Corliss Steam-Engine Company, in Providence, in the same condition as they were when the arrangement of May, 1869, was consummated 'by order of the Department,' whereby the original contracts for this machinery were canceled, and the terms of settlement for said machinery were all arranged, and since been fulfilled on the part of the Corliss Steam-Engine Company, as is fully and officially confirmed by said certificate.

"Yours, &c.,

"GEO. H. CORLISS,
"*President Corliss Steam-Engine Company.*

"J. W. KING, Esq.,
"*Chief of Bureau of Steam-Engineering, Washington, D. C.*"

This suit is instituted to recover the amount stated in the certificate as due to the claimant.

We should be at a loss to understand why this suit should be necessary, were it not that, in the act of July 15, 1870, "*making appropriations for the naval service for the year ending June* 30, 1871," (16 Stat. L., 325,) there appears a proviso, "that before paying the claim of the Corliss Steam-Engine Company, the Secretary of the Navy shall cause a re-examination of said claim to be made by the law-officers of the Navy Department, and two competent engineers to be detailed for that purpose, who shall deduct from the contract-price with said steam-engine company whatever sum it would have cost said company to have completed their said contract."

How or why this legislation was obtained is, of course, unknown here; nor need we seek light on that subject, as it is no part of the contract before us. Nor is it a rule of decision prescribed to this court, but simply a direction to officers of an executive department, which they are bound to follow, but which has no controlling force here. We therefore deal with the case as though that proviso did not exist.

And what is the case? It is simply a settlement, by mutual agree

ment, between the claimant and the Navy Department, of a matter which, by the action of that Department, was placed in an unsettled condition. There is no allegation that the Department was ignorant of the facts of the case, or that the claimant was guilty of any fraud, misrepresentation, or other wrong, but, on the contrary, it is singularly clear and unquestionable that every fact was known to both parties, and that the whole transaction was unaffected by taint or infirmity. If such a settlement, accompanied by the giving up by one, and the taking possession by the other, of the property involved, cannot be judicially maintained, it would seem that no settlement by any contractor with the Government can be considered a finality against the Government. If the Government may causelessly set aside such a settlement, why may not the claimant? Would an action here by the claimant, for more than the amount stipulated in that certificate be entertained for a moment, unless it could impeach the settlement for fraud or mistake of fact? And if it would not be heard in such an action, why should the Government be allowed to repudiate its own contract, and demand that the company take less than the agreed amount? When the Government assumes the position of a contractor with a citizen, it comes under all the obligations and liabilities of an individual, and must abide by its own acts and agreements, with the added obligation, because it is a government, and more powerful than any individual, to deal with the individual in the strictest fairness and justice. It is to hold the Government to its contracts with the citizen, and to give the latter full redress for any breach of such contracts, that this court was established.

But we need not enlarge. When, in the letter of March 11, 1870, the president of the company submitted that a most reasonable condition to a re-opening of the question of the company's claim would be a return of the engines, boilers, and appurtenances to the works of the company, in the same condition as they were when the arrangement of May 1, 1869, was consummated, he assumed a position which was strictly tenable. Such a return would not, merely in and of itself, authorize a re-opening of the settlement; but certainly without it such re-opening could not be allowed, consistently with any established legal principle.

There will be judgment for the claimant for $257.688.

20½ In the Court of Claims, December term, 1874.

CORLISS STEAM-ENGINE CO. *vs.* THE UNITED STATES. } No. 7156.

Upon the trial of this case the defendants, by their Attorney-General, ask the court to find the following facts in the case, viz:

1. That the letter of the claimants, dated May 14th, 1869, proposing a settlement, was received at the Navy Department by D. D. Porter, Admiral, who was acting for the Secretary of the Navy, and by the said Porter was referred, without instructions, to J. W. King, chief of the Bureau of Steam-Engineering, and that subsequent to the said
21 reference an endorsement was placed upon the said letter in the following words: "Accept last prop. D. D. P.;" which endorsement was a forgery.

2. That on the 15th of March, 1870, J. W. Strong, captain, and Benj. F. Garvin, chief engineer, members of the board which made the report of April 26th, 1869, made an additional or supplemental report, (by order of the Secretary of the Navy,) which is as follows:

"WASHINGTON, D. C., *March* 15, 1870.

"Referring to the report of the board of April 26, 1869, ordered by the Hon. Secretary of the Navy on the 30th of March, 1869, to examine and estimate upon the unfinished steam-machinery then being constructed at different establishments with a view to obtaining
22 a release from the contracts if, in our opinion, such a release would be for the interest of the Government:

"We have the honor to state, in explanation of that report, that when we say 'the following is a list of the engines and the amount due on contracts and reservation upon completion, viz:

'Corliss Steam-Engine Company: Balance on contract for one (1) 60×36 engines	$100,000 00
'Extra bills on ditto	11,549 15
'Corliss Steam-Engine Co.: Balance due on contract for one (1) pair 100-inch engines	140,000 00
'Extra bills on ditto	7,068 25
	'258,617 40,

we intended to represent that these sums were not then due the contractors, but would be due on the completion of the contracts, to wit, the machinery finished and erected in the vessels ready for sea-service, and when so finished and erected, that the further sum of
23 thirty thousand dollars on the 100-inch and $15,000 on the 60-inch engines would be due the contractor according to the terms of the contract.

"We further say in our report that we estimate the cost to the contractor to complete the contracts to be the amounts now due, except upon the 60 x 36 engine at the Corliss Steam-Engine Works, which would cost about $15,000, meaning that we estimate the cost to the Corliss Steam-Engine Co. to complete the 100-inch engine would be the amount that would be due on completion and erection in the vessel, viz. $140,000, this sum being the balance unpaid of the amount stated in the contract; not that any amount was due at the time the report was made. We further stated in our report
24 as follows: 'Should these contracts be completed as far as they can be with a view to storing them in the navy-yards, there would be a deduction upon each of the 60 x 36 engines of about $15,000, and upon the 100-inch engine constructing by the Corliss Steam-Engine Co. of about,' meaning that, in our opinion, at least these amounts should be retained after the engines, boilers, and all appurtenances were completed as far as possible before erecting in the vessels.

Recapitulatory statement as follows:

"Contract price for 100-inch engines	$700,000	
"The amount paid on this contract is	560,000	
"The amount that would be due on this contract if completed and erected in vessel		140,000 00
"Extra bills		7,068 25
"Transportation		30,000 00
		177,068 25
"Deduct the estimated cost of completion and erection in vessel		140,000 00

25	"Due Corliss Steam-Engine Co. on 100-inch engine when delivered at navy-yard	37,068 25
	"Contract price for 60′ x 36′ engine	400,000
	"Amount paid on this contract	300,000
	"Amount that would be due on this contract if completed and erected in vessel	100,000 00
	"Extra bills	11,549 15
	"Transportation	15,000 00
		126,549 15
	"Deduct estimated cost of completion and erection in vessel	15,000 00
	"Due Corliss Steam-Engine Co. on 60′ x 36′ engine when delivered at navy-yard	111,549 15
	"Summary:	
	"Due Corliss Steam-Engine Co. on 100-inch engine delivered at navy-yard	37,068 25
	"Due Corliss Steam-Engine Co. on 60′ by 36′ engine delivered at navy-yard	111,549 15
26	"Due in full	148,617 40

"Respectfully submitted by your obedient servants,
(Signed) "J. H. STRONG, *Captain.*
(Signed) "BENJ'N F. GARVIN,
"*Chief Engineer.*"

"Hon. GEORGE M. ROBESON,
"*Secretary of the Navy, Washington, D. C.*"

3. That on the 28th of October, 1870, the Secretary of the Navy, in pursuance *on* an act of Congress, approved July 15th, 1870, entitled "An act making appropriations for the naval service for the year ending the 30th June, 1870," appointed Chief Engineers Elbridge Lawton and James W. Thompson, as a board to re-examine the claim of the Corliss Steam-Engine Co., which board, on the 7th of November of that year, *under* the following report:

"U. S. NAVY-YARD, BOSTON,
"*Chief Engineer's Office, November 7th,* 1870.

27 "SIR: In obedience to your order of October 28, we would respectfully state that we have made a careful inspection of the machinery furnished by the Corliss Steam-Engine Company, now stored in this yard, viz, one pair of engines known as the 100″ × 48″, and one pair of engines known as the 60 × 36, and have carefully estimated what it would have cost the Corliss Steam-Engine Company to have completed and erected the same on board ship. We have also carefully examined all the papers connected with the claim of the Corliss Steam-Engine Company, as furnished by the Department. We find by reference to the said papers that the contract-price for the machinery known as the 100″ × 48″, the delivery and erection of the same on board ship, complete, to be seven hundred and thirty thousand dollars, ($730,000.)
28 Up to March 4, 1869, bills for extra work had been allowed on

the same for seven thousand five hundred and nineteen dollars and twenty-five cents, ($7,519.25,) making a total of seven hundred and thirty-seven thousand five hundred and nineteen dollars and twenty-five cents, ($737,519.25.) On this contract there has been paid five hundred and sixty thousand dollars, ($560,000,) leaving as due, had the contract been completed, one hundred and seventy-seven thousand five hundred and nineteen dollars and twenty-five cents, ($177,519.25.) This machinery has been delivered in an unfinished state, and to have finished and erected the same on board the vessel, complete, including duplicate pieces and stores, would have cost the Corliss Steam-Engine Company one hundred and seventeen thousand and one hundred dollars,
29 ($117,100,) leaving a balance due said company on this contract of sixty thousand four hundred and nineteen dollars and twenty-five cents, ($60,419.25.)

"The contract-price for the machinery known as the 60 × 36, delivered and erected on board ship, complete, was four hundred and fifteen thousand dollars, ($415,000.) Up to March 4, 1869, bills for extra work had been allowed for eleven thousand five hundred and forty-nine dollars and fifteen cents, ($11,549.15,) making a total of four hundred and twenty-six thousand five hundred and forty-nine dollars and fifteen cents, ($426,549.15.) On this contract there has been paid three hundred thousand dollars, ($300,000,) leaving as due, had the contract been completed, one hundred and twenty-six thousand five hundred and forty-
30 nine dollars and fifteen cents, ($126,549.15.) This machinery, also, has been delivered in an unfinished state, and to have finished and erected the same on board the vessel, complete, including duplicate pieces and stores, would have cost the Corliss Steam-Engine Company the sum of forty-five thousand nine hundred and ninety dollars, ($45,990,) leaving a balance due said company on this contract of eighty thousand five hundred and fifty-nine dollars and fifteen cents, ($80,559.15.)

"SUMMARY.

"Contract-price of the 100 × 48-inch engines	$730,000 00
"Extra bills allowed on same	7,519 25
"Contract-price of the 60 × 36-inch engines	415,000 00
"Extra bills allowed on same	11,549 15
"Total amount of contracts and extra bills	1,164,068 40
"Of this sum there has been paid accounts of the 100 × 48-inch engines	560,000 00
31 "On account of the 60 × 36-inch engines, there has been paid	300,000 00
"Total amount paid	860,000 00
"Balance due had both contracts been completed	304,068 40
"Estimated cost of completing and erecting the 100 × 48-inch engines, including duplicate pieces and stores, at the time of delivery at this yard	117,000 00
"Estimated cost of completing and erecting the 60 × 36-inch engines, including duplicate pieces and stores, at the time of delivery at this yard	45,990 00
"Total sum that would have been required to complete both contracts	163,090 00
"Total sum due the Corliss Steam-Engine Company at the time the machinery was delivered to the Government.	140,978 40

32 "We are, very respectfully, your obedient servants,
"ELDRIDGE LAWTON,
"*Ch'f Eng'r U. S. N.*
"JAMES W. THOMPSON,
"*Second Ch'f Eng'r U. S. N.*

"Hon. GEORGE M. ROBESON,
"*Secretary of the Navy, Washington, D. C.*"

4. And the defendants ask the court to find from the proofs what amount it would have cost the claimants to have completed the said engines and erected them in vessels, in addition to what it cost them to store the same, in the condition in which they were stored at the Charleston navy-yard.

JOHN GOFORTH,
Asst. Atty. General.

33 Upon the foregoing request for additional findings, the court makes the following ruling, to wit:

The foregoing request is refused because the matters therein set forth are regarded as immaterial.

By the court.

34 In the Court of Claims.

THE CORLISS STEAM-ENGINE COMPANY
vs.
THE UNITED STATES. } No. 7156.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the United States for the allowance of an appeal, as filed in the clerk's office August 14, 1875, and of the order of the chief-justice of said court allowing the same; of the finding of facts by the court, and the conclusion of law thereon, and of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this fourteenth day of October, A. D. 1875.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 704. The United States, appellants, vs. The Corliss Steam-Engine Company. Court of Claims. Filed 14th October, 1875

No 704

Leb B

Judge Davis

In the Supreme Court of the United States.

THE UNITED STATES, APPELLANTS,
vs.
THE CORLISS STEAM-ENGINE COMPANY, APPELLEES.
} No. 704.

Supplemental Brief for Appellants.

In the Supreme Court of the United States.

THE UNITED STATES, APPELLANTS,
vs.
THE CORLISS STEAM-ENGINE COMPANY, appellees. } No. 704.

Supplemental brief for appellants.

In extension of the matter of defense to the action stated in the original brief for the appellants, beginning at the last line on page 5, by leave of the court the following additional assignments of error and argument thereon are submitted:

We further assign for error the entry of judgment in favor of the claimants for $257,688, whereas the court should have dismissed the petition, because the alleged agreement of the Navy Department on behalf of the United States appears on its face to have been made subject to ratification by Congress, and on condition of an appropriation which was never made; because, also, the said Department had no lawful authority in the premises to make an absolute and binding agreement for payment of the sum named in the alleged agreement; and because the record does not show by any finding of facts (although such finding was requested) or otherwise that the amount for which judgment was entered was the amount of the lawful damages sustained by the

claimants by reason of the breach of the two original contracts set forth in their petition.

We contend, therefore, in the first place, that the Court of Claims misapprehended the legal effect of the alleged agreement of the Navy Department, in construing it as intended to bind and as binding the United States absolutely to payment of the amount specified.

That the Department never intended to bind the United States by its action appears, we submit, by the plain reading of the letter of acceptance and of the certificate of December, in each of which payment is declared to be conditional on a subsequent appropriation by Congress of the requisite amount. The claimants were notified that the Department had no means of payment, and that payment would not be made until Congress should provide the means. The Department could not, and of course did not, engage that Congress would, within a certain time or at any time, make the appropriation. Can anything be plainer than that, under an agreement so conditioned, no right to demand the sum therein specified and no right of action therefor could accrue to the claimants until the appropriation should be made?

But if the conditional nature of the agreement does not appear to the court so clear on its face as it seems to us, there remains the argument, which seems conclusive, that it is only as conditional that the alleged agreement can escape the objection that it is void for want of authority in the Department to make it.

The power of the Secretary of the Navy and his subordinates to bind the United States by their agreement is subject to certain statutory limitations which they cannot exceed, and which all persons dealing with them as contracting agents are bound to know and regard.

The solicitude of Congress on this point was early manifested, and its measures of precaution and restriction have never been relaxed, but always augmented and made more stringent. (See Rev. St. U. S., Title Public Contracts, pp. 738–743.)

In 1820 (§ 6, act May 1, 3 St., 568) certain heads of Executive Departments, including the Secretary of the Navy, were prohibited from making any contract (other than for subsistence and clothing of the Army and Navy) *except under a law authorizing the same, or under an appropriation adequate to its fulfillment.*

This was extended to all contracting agents by § 10, act March 2, 1861, 12 St., 220, (Rev. St., § 3732.)

Even the form of contracts was carefully regulated and prescribed under penal sanction by an act of June 2, 1862, 12 St., 411, (Rev. St., § 3744, &c.)

The defendant's position, in view, especially, of the statutory prohibition cited, is, that since the alleged contract of the Navy Department was not "under a law authorizing the same," nor "under an appropriation adequate to its fulfillment," the transaction can have no force or effect except such as might be given to it by a subsequent authorization by law, or by a subsequent adequate appropriation for its fulfillment; that as the Secretary of the Navy had no power, in the face of this statute, to make his agreement absolute, it is not to be presumed that he had any such intent, but rather (as the terms of his communications indicate) that his action was intended to be subject to ratification by that authority which could adopt it and make it effective; and that since such ratification has been hitherto refused by Congress, no right of action against the United States has accrued to the claimants on the alleged con-

tract, and the court below erred in sustaining the action thereon as being an absolute agreement.

The discussion of this and the subsequent point of absolute nullity of the transaction will be made clearer perhaps by reference to the facts in the case.

The Secretary of the Navy, as appears by the sixth finding, (Record, page 10,) had rescinded two written agreements with the claimants for construction of engines, &c., while the work was as yet unfinished, and while a portion of the contract price, which would be due and payable on completion, was of course unpaid. The rescission was in consequence of a report set forth in the fifth finding, at page 6 of the Record, which informed the Secretary of the Navy, among other things, of the amount which, in the opinion of the board of engineers, it would cost the claimants to do that which remained to be done on their part under the contracts.

It is well at this point to notice the position of the parties to the rescinded contracts as respects their legal rights or liabilities. The claimants could have gone forward and fulfilled their covenants, and thereupon the United States would have been liable for the entire contract price; or the claimants could have recognized the rescission, abandoned further work on the engines, and recovered in an action in the Court of Claims their lawful damages, namely, the difference, if any, between the contract price and such amount as they could show that it would have cost them to complete the contracts.

The United States have never denied nor sought to evade this legal liability, but on the contrary contend and insist that it is the only liability to which they have ever been lawfully subject in the premises.

But what was done by the claimants and the defendant's agent in this state of affairs?

The claimants, *and not the Navy Department*, first proposed a settlement, (seventh finding, page 10, Record,) offering in the alternative to take the engines as they were, or to deliver them at the Charlestown navy-yard, *in their unfinished condition*, on payment of the residue of the contract price, less a specified deduction in each case. The amount which they proposed to deduct from the contract price on delivery left their offer in that case about one hundred thousand dollars greater in amount than the amount which the United States could have been compelled by law to pay in an action for damages, assuming the opinion of the said board of engineers as to the cost to the claimants of completing the contracts to have been correct.

The Navy Department saw fit to accept the proposition for delivery in the form which appears in the eighth finding at page 11 of the Record, May 20, 1869, and on December 8, 1869, gave the certificate appearing at page 12 of the Record, on which this action is brought, and which, after reciting the considerations which entitle the Corliss Steam-Engine Company to payment of $257,688, adds, "and payment will be made when the United States Congress shall make the necessary appropriation for this Bureau," conforming in that respect to a similar notification in the letter of acceptance of May 20, 1869.

Now, even admitting that the Secretary could make an agreement to liquidate the damages the United States should pay the claimants by reason of his rescission of the contracts, (which we maintain was the only thing there was to agree about,) the question arises, did he in fact undertake to bind his principal to pay the sum specified?

In view of the statutory limitations before mentioned,

taken in connection with the language quoted from the certificate, we contend that the certificate does not purport to make other than a conditional engagement with the claimants.

It cannot be presumed that the public officer intended to exceed his authority, and it will be presumed that both parties had in mind the limitations under which he acted and made their agreement in accordance therewith, and the court should seek for the evidence of such intent in their acts in endeavoring to sustain the agreement. This is abundantly found, as we submit, in the letter of acceptance and certificate in which the Corliss Company were explicitly notified that no binding agreement to pay the money could be made for want of an appropriation adequate to its fulfillment. If the claimants chose to go on with that risk they might, but the Department gave and could give no guarantees. The certificate must be interpreted, as to its legal effect, as a whole. It is clear that the Department never intended it as an engagement that the claimants should thereby be paid or have a right to recover $257,688, without regard to any appropriation by Congress. It cannot be taken to mean any more than it can lawfully mean, and that is, we agree that you shall be paid so much provided Congress ratifies by appropriating the money, and of that you, the claimants, must take the risk. On this the claimants were not expected to demand payment, and could not lawfully demand it, before Congress provided the Bureau of Steam-Engineering with the means of payment; hence no right of action was given by or could be founded on the certificate, if the condition expressed therein on which payment depended was not fulfilled.

In giving this conditional acknowledgment of December 8, 1869, the Department (and the claimants likewise) no doubt anticipated that the requisite action by Congress would be promptly and favorably taken, or the claimants' offer would not have been entertained and acted upon; but in this those concerned were disappointed, for Congress proceeded to act as follows:

On February 18, 1870, the Senate by resolution (Senate Journal, second session Forty-first Congress, p. 268) called on the Secretary of the Navy for information as to the fact and circumstances of a settlement with the claimants, to which the Secretary responded on March 31, 1870.

On February 24, 1870, Congress passed "An act making appropriations to supply deficiencies in the appropriations for the naval service for the year ending June thirtieth, eighteen hundred and seventy, and for other purposes." It appropriated "For the Bureau of Steam-Engineering, five hundred thousand dollars," and a certain sum for another Bureau, and "Provided that the money so appropriated shall be expended only for the purpose of providing materials, carrying on the work, and paying the employés of the bureaus for which it is appropriated." (16 Stat., 68.)

On May 28, 1870, the Senate by resolution (Senate Journal, second session Forty-first Congress, p. 731) sent the matter to the Committee on Retrenchment, by which it was investigated, and their report, with the testimony taken, printed.

On July 15, 1870, Congress passed the appropriation act for the naval service for the year ending June 30, 1871, which contained the following provisions: "Bureau of Steam-Engineering. For repairs of machinery

of steamers, boilers, instruments, tools, labor, transportation, materials, stores, one million dollars: *Provided*, That no part of this appropriation shall be expended on account of naval engines contracted for during the war," (16 Stat., 326;) and at page 325, "To enable the Secretary of the Navy to discharge liabilities provided for by contracts made previous to March four, eighteen hundred and sixty-nine, five hundred and fifteen thousand nine hundred and sixty dollars and ninety-two cents, or so much thereof as may be necessary: *Provided*, That before paying the claim of the Corliss Steam-Engine Company, the Secretary of the Navy shall cause a re-examination of said claim to be made by the law-officers of the Navy Department, and two competent engineers to be detailed for that purpose, who shall deduct from the contract price with said steam-engine company, whatever sum it would have cost said company to have completed their said contract."

In this connection it may be observed that on July 12, 1870, three days before, Congress had enacted "That it shall not be lawful for any Department of the Government to expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year, or to involve the Government in any contract for the future payment of money in excess of such appropriations." (§ 7, act July 12, 1870. 16 Stat., 251.)

The Court of Claims was requested in the third request (see page 18) to find and return to this court as a fact what appeared on the record below, that in accordance with the provision above cited of the act of July 15, 1870, the Secretary ordered the re-examination, and on November 7, 1870, the engineers made the report which appears of record, and which shows that it would have cost the

claimants $163,090 to complete the contracts, and that accordingly the total sum due the claimants at the time of delivery would be $140,978.40. The court below regarded this as immaterial, and refused on that ground to find as requested.

On March 3, 1871, Congress passed the usual appropriation act for the naval service for the year ending June 30, 1872, containing the following provision: "Bureau of Steam-Engineering. For repairs and preservation of machinery, boilers, labor in navy-yards, coal, transportation, materials, and stores, one million dollars: *Provided*, That no money appropriated by this act shall be expended on account of naval engines contracted for during the war." (16 Stat., 531.)

The same proviso was attached to the appropriation act of May 23, 1872, for the naval service for the year ending June 30, 1873, at the end of the first section of the act. (17 Stat., 154.)

It was again repeated in the act of March 3, 1873, making appropriation for the naval service for the year ending June 30, 1874. (17 Stat., 556.)

On March 26, 1873, the claimants filed their petition in this suit in the Court of Claims, and it does not appear that Congress thereafter acted in the premises.

It appears, therefore, that Congress not only never ratified the conditional agreement in question, but by special enactment, five times repeated, has refused its assent, and has also, in the act of July 15, 1870, (16 Stat., 325,) recorded its determination to authorize no settlement by the Navy Department except in accordance with the liability for damages fixed by law, on rescission of contracts of the nature of those with claimants.

The question is whether, under such circumstances,

this court is prepared to follow the Court of Claims in holding that the agreement was intended to bind the United States to absolute payment of the sum which we contend was only conditionally fixed as the basis of settlement, subject to approval of that authority which alone can appropriate the public money.

But even if it is necessary to concede that the Navy Department intended to absolutely agree that the claimants should receive the sum of $257,688, and that the communications and acts of the parties cannot be otherwise construed, the difficulty is not removed. It only compels us to the inquiry demanded by the second assignment of error, namely, Had the Navy Department authority to make such an agreement?

The nature of this agreement has already been developed from the facts as in substance a settlement of the claim for damages which had vested in the Corliss Company, in consequence of the order of the Department that no more work should be done on the engines. This act was clearly intended to be, and was, so far as regarded the Department, a rescision of the contracts, and released the company from any further obligation to continue the work. The company waived its right of nevertheless completing the work, and recovering the full price, and the only legal right which in that case they could have left, was the right to such damages as, under the rules of law, they could show themselves to have sustained, and this was the substantial consideration of the agreement of settlement which they proposed. The transaction was not under or in pursuance of the original contracts, but a new contract, with other and different stipulations, in the making of which such authority as there may have been for making and sustaining the original contracts could have no effect.

The question, more specifically stated, is therefore: Had the Secretary of the Navy power to determine and agree what sum the United States should pay as damages on rescision of its contracts?

The question of authority in such a case is to be determined as was ruled in the Floyd acceptances, mainly from the acts of Congress.

There is no act of Congress that grants such a power to the Secretary in terms, nor is there any general grant of authority to which such a power might be incident, so far as we know, unless it can be claimed as incident to the power to contract, which, we submit, would be a dangerous and unwarrantable conclusion.

It would seem, from the nature of this case, that such a power should not be vested in an executive officer, as it is essentially a judicial function, and, under our system of government, the determination of the rights of parties under such circumstances as are here presented cannot be taken by any presumption (if even by legislative expression) from the proper judicial tribunal. And this has been adjudicated in analogous cases.

In United States *vs.* Ames, (1 Wood and Min., 89,) an executive officer had undertaken to submit a matter of controversy between the United States and an individual to arbitration, who thereupon claimed the award as binding the United States. The court held the want of authority a decisive objection, saying: "All judicial power is, by the Constitution, vested in the Supreme Court and such inferior courts as Congress may from time to time ordain and establish. (Constitution, art. 3, § 1.) No Department nor officer has a right to vest any of it elsewhere; and it has been questioned even if Congress can vest it in any tribunals not organized by

itself." * * * "Such submissions and awards are sometimes useful, as they may be afterwards accepted and voluntarily enforced by the proper authority, as a guide to what is suppposed to be nearly right and safe; but I can see no legal ground on which their execution can be compelled by a court of law." And see *Ex parte* Randolph, 2 Brockenbrough, 479.

In Lovett's case, (9 N. & H., 494,) the court said: "But the case at bar is entirely a claim for unliquidated damages for breach of contract, for the relation of landlord and tenant, however formed, rests on contract, and we think that neither the War Department nor the Secretary of War were authorized to finally adjudicate the claim and conclude the parties to it."

See also, in general, on the power of executive agents to bind the United States by their acts or agreements, The United States *vs.* Nicoll, 1 Paine, 646; Lee *v.* Monroe, 7 Cranch, 572; the Floyd acceptances, 7 Wall, 666.

It may be urged that, although no express statutory authority can be shown under which the Navy Department acted in this matter, the authority to contract originally for construction of the engines carries, by some sort of implication, the authority to settle and make binding agreements respecting any matter of controversy arising from or connected with the contracts. On this subject, the views of Attorney-General Black in the matter of contracts on the Washington aqueduct, (9 Opinions, 81) will be found very pertinent and decisive.

It is not necessary in this case, nor in general, as has already been shown, to urge that what the Navy Department did was unlawful, and that all controversies between the United States and individuals must be

determined by litigation in the courts. It is eminently proper that amicable adjustments should be made, and an executive officer like the Secretary of the Navy no doubt can exercise a just discretion in either proposing or acceding to a proposition to compromise a matter in dispute pertaining to his Department where the law does not prohibit such action, subject to ratification or revision of his action by that body or tribunal in which the ultimate authority is vested. His action and purported agreements in such case cannot be binding without such ratification, and in this case we have shown that Congress has signified its dissent in unmistakable terms, both by refusing to appropriate the amount required, and by directing the terms on which alone a settlement should be made.

We insist, therefore, that in this case it is apparent that no authority, express or by implication, was vested in the Navy Department to agree that the United States would absolutely pay a fixed sum either as the equivalent of the claimant's damages or for release from the contracts, or for whatever the nature of the alleged agreement may be held to have been.

But besides this argument, to prove the nullity of the agreement for want of any grant of authority to make it, we have also the decisive objection that it falls clearly within the statutory prohibition before mentioned.

The fact is not disputed that no statute had authorized the contract, and that it was not made under an appropriation adequate for its fulfillment.

The proper meaning and application of the statute has been frequently and so well considered in the opinions of the learned Attorneys-General Clifford, Black,

and others, that we need only refer to these authorities. (4 Opinions, 600; 5 ib., 17; 6 ib., 31; 9 ib., 18; see also Fowler's case, 3 N. & H., 43.)

The Court of Claims, in stating in its opinion, (Record, pp. 15, 16,) its view of the nature of the case, seems to overlook or disregard this question of authority, which seems to us well worthy of consideration. Its reasoning is predicated on the assumption that the acts of the Navy Department necessarily bound the United States; but if there is any force in the foregoing considerations, the taint and infirmity of nullity affected the whole transaction.

We respectfully submit that the right of an executive officer, after he has subjected the United States to a claim for damages by his action, to make an agreement binding them to pay such sum as he shall think proper in settlement, which can be enforced by action in the courts and the payment exacted, without regard to the statute prohibiting any contract except under an adequate appropriation, is certainly questionable; and especially, if there is reason to believe that the agreement was not in conformity with the damage sustained, according to the lawful measure thereof, and if it also appears that the legislative power which rightfully controls the public money has unmistakably indicated its dissent and its refusal to sanction the proceeding.

It only remains to call attention very briefly to the final assignment of error.

The claimants chose, as it would seem, to bring their action, and rest it on the agreement as in itself conclusive of the amount due, and dispensing with proof of the actual damage, and the court below sustained that view. But the defendants, on the grounds hereinbefore men-

tioned, contended that the action in that form could not be maintained, and that there could be no recovery in the present, or in any form of action, without proof of the actual damage sustained according to settled rules of the measure of damages in such case. They of course did not and do not concede that the claimants could allege one cause of action and prove another, but contend that if by any construction of the allegations of the petition they can be held to state a sufficient cause of action, proof of the actual damage, as aforesaid, would be necessary to sustain it; and such proof they are and always have been ready to meet.

It is unfair to the defense, therefore, to represent it as attempting or desiring to repudiate a valid contract. The grounds of defense set forth may not be well taken, and may not seem to the court to be entitled to serious attention, but they are presented in good faith, and with no disposition to impede the recovery of a just claim.

THOMAS SIMONS,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 704.

THE UNITED STATES

vs.

THE CORLISS STEAM ENGINE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

S. F. PHILLIPS,
Solicitor General.

Judd & Detweiler, Printers.

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No. 704.

THE UNITED STATES

vs.

THE CORLISS STEAM ENGINE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

This is a claim by the Corliss Company against the United States for $257,688, under the following state of facts:

In 1863 the company contracted with the United States to build and erect, under the superintendence of an officer to be appointed by the Secretary of the Navy, in a secure and finished state, in the United States steamers Pampanoosuc and Illinois, respectively, within a certain time, which subsequent events render it unnecessary to state, a pair of 100 inch, and a pair of 60 inch engines. Record, folio 9, &c.

On the 30th March, 1869, the Secretary ordered three officers to examine and make estimates upon the engines so far as then finished.

They reported (April 26, 1869,) that upon completion of such engines there would still be due to the claimants (1) on the 60 inch engine $100,000, and (2) on the 100 inch engine $140,000; and that it would cost the contractors to complete them *all that would be paid* upon the second, and $150,000 upon the first; *i. e.* that the contractors after completion, would receive *upon both* $85,000 more than they would expend, besides $18,617.40 *upon extra bills*, and also, if required to transport such engines to a navy yard $45,000, for *extra allowance*. Record, folio 11.

This report, after treating of like work in other yards, proceeds to recommend that no farther expense be incurred in completing engines which probably would be antiquated before needed, &c.

Thereupon, (May 8, 1869,) notice was given to the claimants to proceed no further with the work.

On the 14th May, 1869, the claimants offered to the Secretary of the Navy two alternative proposals for settlement, the second of which was that they would deliver the engines in their then state of completion at the Charlestown navy yard, for $45,000 *less than* the $304,068.40 which it was agreed would be due to them if the contract had been executed according to its original terms. This proposal was accepted. Record, folio 15. In accepting the proposal the Chief of Bureau added: "In consequence of the very limited appropriations of this Bureau, only one payment will be made, and that on delivery of the machinery at the Charlestown navy yard; the balance cannot be paid until Congress makes further appropriation, but a certificate for the amount due will be given you."

On the 26th May, 1869, by order of the Bureau, the chief

engineer made a detailed statement showing the extent to which the engines had been completed; and at that time the boilers were complete, and the engines were about completed. Record, folio 16.

After the acceptance of May 20th, the claimant proceeded to deliver the engines, and this was accomplished on or before November 13th, 1869.

On the 8th of December, 1869, by order of the Secretary, the following certificate was delivered to the claimant:

"NAVY DEPARTMENT,
"BUREAU OF STEAM ENGINEERING,
"*December 8th*, 1869.

"This certifies that the Corliss Steam Engine Company of Providence, Rhode Island, having made, in its letter of May 14th, 1869, to the Navy Department, an offer to settle and cancel the contract made by and between the Bureau of Steam Engineering and the Corliss Steam Engine Company, of October 26th, 1863, and November 13th, 1863, for a pair of 100″ x 48″ engines, boilers, and appurtenances, and a pair 60″ x 36″ engines, boilers, and appurtenances, on the following terms, viz: to deliver the engines, boilers, and appurtenances at the Charlestown navy yard, in their then unfinished condition, for the sum of two hundred fifty-nine thousand and sixty-eight dollars forty cents ($259,068.40,) and the offer of the company having been accepted by the Bureau of Steam Engineering (by order of the Department) by the Bureau's letter of May 20th, 1869, and the engines, boilers, and appurtenances embraced in the two contracts above-named having been delivered at the Charlestown navy yard, in an unfinished condition, as agreed upon between the Corliss Steam Engine Company and the Bureau of Steam Engineering, except five hundred fifty-two (552) tubes, amounting to thirteen hundred eighty dollars forty cents ($1,380.40,) which, being deducted, entitles the Corliss Steam Engine Company to the payment of the sum of two hundred fifty-seven thousand six hundred eighty-eight ($257,688) dollars, due on the first day of Ooctober last, and payment

will be made when the United States Congress shall make the necessary appropriation for this Bureau.

"J. W. KING,
"*Chief of Bureau.*"

On the 10th of March, 1870, the said Chief of Bureau informed the claimants that a Board had been ordered to examine their claims for payment, and he requested them to return the above certificate. This request was declined in a note dated March 11th, 1870, the claimants suggesting as a reasonable condition to any reopening of their claims a *return of the engines, &c.*, (weighing some 1500 tons,) to their works, in the same condition as they were when the arrangement of May, 1869, was consummated, whereby the original contracts were canceled and the terms of settlement were all arranged.

As a conclusion of law the Court of Claims thereupon found that the claimants were entitled to recover the $257,688 mentioned in the certificate. Record, folio 17.

Upon the trial of the case, the Counsel for the United States asked the Court to find (amongst other things) that upon the 15th of March, 1870, two of the officers who had made the report of April 26, 1869, presented to the Secretary another report explanatory of the former, in which they said that such former report meant to show (as is above stated) that the claimants were then entitled to $148,617.40; and such counsel also asked the Court to find that another report, made by order of the Secretary, November 7th,

1870, estimated what was due to the claimants as being $140,978.40. Record, folios 21 and 26.

This last report was ordered in accordance with an enactment by Congress (July 15, 1870) in the Naval Service Appropriation act (16 Stat., 325 :)

"That before paying the claim of the Corliss Steam Engine Company, the Secretary of the Navy shall cause a re-examination of said claim to be made by the law officers of the Navy Department and two competent engineers, to be detailed for that purpose, who shall deduct from the contract price with said steam engine company whatever sum it would have cost said company to have completed their said contract."

The Counsel for the United States further asked the Court to find from the proofs what it would have cost the claimants to complete the engines and erect them in the vessels, in addition to what it cost them, and store the same in the navy yard.

The Court declined to find as requested, upon the ground that it was "immaterial." (Record, folio 33.)

We assign for error the conclusion by the Court of Claims that the United States were so *bound* by the *settlement* contained in the certificate of December 8, 1869, that they could not show that the amount so certified exceeded by more than $100,000 what was, under the circumstances, really due to the claimants.

In arguing this matter, it must be assumed that, if allowed so to do, the United States could have shown that such excess amounted to about $116,000, for the Court said that an

offer to prove that fact was an offer to prove what was *immaterial.*

It seems that the fact that *a certificate* was given to the claimants does not aid their case. The substance of that case is that the Secretary *agreed*, upon their transporting the engines to Charlestown, to pay them the amount claimed, and that thereupon they complied with the condition imposed. An oral agreement would have been quite as effective, *for it seems certain that he had no power to issue any written evidence of debt by the United States that, by being written, would have a greater effect than if oral.* (See The Floyd Acceptances, 7 Wall., 666.)

It may be that the agreement is none the worse for being in writing. What we submit is that *is no whit the better on that account.*

The view which we take of this transaction is, that when the United States directed the claimants to stop work upon the engines, the latter became entitled to damages for such breach of contract, which damages were, *within a measuring cost*, ascertained by well-known principles of law, and that whatever might be true of the inconvenience of disturbing an arrangement, varying from the truth by a small percentage only, yet where the Court sees that the damages assessed exceed the true damages by the difference between $140,000 and $257,000—*i. e.*, more than 80 per cent., such assessment becomes, *as matter of law, invalid.*

Here the Court of Claims said that if the United States could have proved the assessment made in the report of No-

vember, 1869, to be the correct assessment, it would have been immaterial.

To decide whether it would have been immaterial we must consider what its effect would have been had it been shown.

To have shown that, would have been to show that the certificate had awarded the claimants 80 per cent. more than what was due to them. Would that have been immaterial? In this connection we submit further that although in ascertaining damages in such cases *an element of fact exists* which would put the assessment to some extent in the hands of *a jury*, yet that if in a case of mere breach of contract involving no question of *smart money* a jury were to exceed the probable amount by 80 per cent., the Court would feel itself called upon to rule the plaintiff to abate his recovery, or otherwise have the verdict set aside.

In all this we assume, as we have a right to assume, that the United States could have shown to the satisfaction of the Court of Claims that the true damages in this case were $140,000, or thereabouts.

If a jury would not have been allowed to assess such an amount against a defendant, we submit that it is not in the power of an officer of the United States to assess such a rate of damages against them.

We admit in this part of the argument that the Secretary could pass upon the element of fact in such cases so far as to fix it *within the limits that a jury might have done*, but we submit that *beyond these limits the error renders the settlement illegal, and remits the claimant to his right of suit in the Court of Claims.*

It must be remembered that in such cases the claimants

may be bound by an arrangement which does not *per se* bind the United States. Because the former are personally present, assenting to the transaction, whilst the latter are dealing through an agent of defined powers. If the United State choose to ratify any such arrangement, they can hold the other party bound, whilst, unless they do, the other party may not be able to enforce it as against them.

This is an answer to a position in this connection taken in his brief by the learned counsel for the claimants.

Again, we submit that by the form of the certificate it appears that the claimants relied for satisfaction upon a fund to be *appropriated by Congress*, and so, that the operation of the act of July 15, 1870, is to the effect that no appropriation has been made except for the true damages arising under the rules applicable in all such cases. It is a narrow view of that act to read it as imposing a rule of payment upon the Secretary only. It clearly means that *the United States refuse to pay according to the terms of the certificate.*

Whatever doubts might be urged in an ordinary case to the applicability of the above doctrines to assessments made by the Secretary, it seems that where, at its next session, Congress has repudiated a particular assessment of that sort, a court will not be disposed to enforce it.

It is only very rarely that Congress interferes with such matters, and it is proper to presume that when interference occurs it is for good reason.

A full presentation of the defence of the United States

requires us to suggest, further, that in all cases where the interests of the public demand that a contract be broken and the other party left to recover such damages as the law awards, *it is intended by our system that the matter shall be referred to the Court of Claims for settlement.*

The present is not a case in which the Secretary and the claimant agreed to substitute one contract for another whilst the latter remained unbroken. The order to cease work was made without a previous understanding with the contractors. Upon that order being given, the situation of the parties (as we submit) became such as virtually to refer the matter at once to the tribunal devised by Congress to represent public justice in disputes about money between plaintiff and the United States. The Secretary is not an agent of the United States for matters of this sort and magnitude.

At all events, by such intervention *he cannot obstruct the processes of the Court of Claims if it happens* (*as here*) *that after all the matter remains to be adjudicated there.*

If the Secretary actually discharges the amount which he has agreed to pay, nothing may remain to be said about it; but if he be directed by Congress not to pay it, we submit that the matter naturally goes before the Court of Claims upon the original rights of the parties as they existed at the time when the cause of action arose.

In short, *his settlement* is only preliminary to a payment *by him;* whilst if the payment has to be made through the Court of Claims, they are to settle the terms without embarrassment by what had been done *provisionaly* (as it were) by the Secretary.

In conclusion, we ask the attention of the Court to the

fact, that under the promise made to them on the 20th of May, 1869, (afterwards embodied in the certificate,) the claimants were not induced to alter, and did not alter, their conditions *under the contract* for the worse, or in any respect so as to be the foundation of a suggestion by them that the United States is bound by the arrangement *because of considerations arising subsequent to the original contract.*

There is no consideration in what took place after the 20th of May to bind the United States for any amount beyond what they owed under the contract. The claimants suggest in their note of March 11th, 1870, that the transportation of the engines to Charlestown was such consideration. But they were bound by the original contract so to transport them. *That transportation was part of the value which the United States were to receive for their original promise to pay, and so could not be a ground for the promise by the Secretary to pay more than that.*

The arrangement between the Secretary and the claimants was one by which he waived a requirement of certain items in the original contract; transportation was one that he did not waive. Of course, a failure to waive that could form no consideration for a new promise; so that when the claimant demanded (March 11th, 1870,) to be restored to the *statu quo* of their contract, they erred in specifying as an item therein a *return* of the engines.

Nor could the alleged *cancellation* of the original contract, (which, whatever the claimants meant by that word in the note of March 11th, 1870, is not found as a fact,) under the circumstances of this case, be such a consideration. The United States had a legal right (subject to the payment of damages) to stop further progress under the contract. It can hardly be said that a cancellation of the paper which evi-

denced what was to have been due to the claimants in case the contract had been executed could have then been material to the claimants, in view of all the admissions and other evidence upon that point to be fouud in other official papers authorized by the Government, some of them on file in this case.

If the paper had been really cancelled, (which is not shown,) it had previously become very insignificant, and therefore its defacement cannot be pretended to be a consideration justifying the payment of more than $100,000 to the claimants. Indeed, the allusion to a *cancellation* is so indirect, and is so probably only metaphorical, that we are not sure that we ought to have combated a suggestion which, perhaps, has not been intended on the other side.

S. F. PHILLIPS,
Solicitor General.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 704.

THE UNITED STATES, APPELLANTS,

vs.

THE CORLISS STEAM ENGINE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

APPELLEE'S BRIEF.

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THE UNITED STATES, APPELLANTS,

vs.

THE CORLISS STEAM ENGINE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

APPELLEE'S BRIEF.

Statement of the Case.

On the 26th day of October, 1863, the claimants entered into a contract with the Navy Department to construct and erect a pair of engines for a steam war vessel, of one hundred inches diameter of cylinder, and four feet stroke; and on the 13th November, 1863, made another contract to construct and erect a pair of engines of sixty inches diameter of cylinder, and three feet stroke, together with all the boilers, coal bunkers, tools, &c., required for working these engines, respectively, according to lists and specifications attached. The respective vessels for which the engines were intended, were to be ready, and by the United States placed at the disposal of the claimants, within six months from the dates of the contracts, and within six

months thereafter, the engines were to be completed and erected in the vessels, and ready for service. The contracts also provided, that the work should be done and materials be selected under the supervision of a naval engineer, to be detailed by the Secretary of the Navy for that purpose. Payments were to be made from time to time, as the work progressed, on the report and estimate of this engineer, reserving sixteen and two-thirds per centum, until the completion of the contracts. This engineer was appointed, took charge and supervision of the work, and made regular semi-monthly detailed reports, a large portion of the time, and monthly reports for the residue; so that the Navy Department was at all times accurately advised of the exact condition of the work, in all its parts and features.

The contract price for the 100-inch engine, set up, &c., was	$730,000
That of the 60-inch engine	415,000
For both	$1,145,000

The United States never furnished the ships in which to erect these engines, and by various changes, alterations, and delays, the work was carried forward upon them, until in the spring of 1869, when the Secretary of the Navy appointed a commission, consisting of Commodore Strong and Chief Engineers Garvin and Fithian, to report as to the best means of disposing of unfinished machinery, &c., under existing contracts. This commission examined into all the work then in progress, and, among the rest, the contracts with the claimants, its progress, condition, and amount due; they also recommended that work be suspended, &c.

On the coming in of this report, the Navy Department, on the 8th May, 1869, (Record, p. 10,) gave notice that work upon the engines would be suspended.

Mr. Corliss being in Washington, the officers of the De-

partment invited him to make an alternative proposal either to keep the work or transport and store it at the Charlestown navy yard.

On 14th May, 1869, he by letter made the proposal required, to deliver the work, in its then condition, at the Charlestown navy yard, for the sum of $259,068.40.

On the 20th of May, 1869, the Department informed him by letter that this proposition was accepted, and that he should accordingly deliver the work to the Charlestown navy yard.

On the same day, a chief engineer of the navy was instructed to make a personal inspection and detailed report, of the work as it then was.

This was done, and a full and detailed report furnished to the Department on the 26th of the same month.

The claimant then proceeded with, and completed the delivery of all the machinery at the Charlestown navy yard. The delivery was completed on the 13th November, 1869, and on the 15th of the same month the commandant of that station, transmitted to the Navy Department, an inventory of every item of the machinery so delivered. It has remained there ever since.

On the 8th December, 1869, the certificate, upon which this suit is founded, was given on the *personal order* of Secretary Robeson, for the amount of the agreed settlement and compromise, deducting $1,380.40 for some tubes which claimant had failed to deliver at the navy yard.

On the 10th March, 1870, the Department wrote claimant that a Board had been ordered to re-examine his claims, and requested him to return the certificate of December 8th, 1869.

On the 11th March following the claimant answered, declining to reopen the question, unless the United States would first return the machinery to the works in Providence, in same condition they were when the arrangement was consummated in May, 1869, and the original contracts given up and canceled.

The facts, as found by the Court of Claims, show that this compromise and settlement was made in the clear light of full, accurate, and detailed knowledge of all, even the minutest, facts relating to the subject matter by both parties, and that in all these details, the case was free from the slightest taint or even suspicion of fraud.

ARGUMENT.

It appears to me that this statement of facts is absolutely conclusive, and I know not how it can be strengthened by argument, illustration, or authority.

I. Is the power of the Secretary of the Navy or the chief engineer to make this certificate disputed?

1st. As to chief engineer:

The act for the reorganization of the Navy Department, approved July 5, 1862, (12 Stat., 510, § 1,) establishes the bureaus in that Department, and among them is "A Bureau of Steam Engineering."

Section 4 provides:

"The Secretary of the Navy shall assign and distribute among the said bureaus such of the duties of the Navy Department as he shall judge to be expedient and proper; and all of the duties of said bureaus shall be performed under the authority of the Secretary of the Navy, *and their orders shall be considered as emanating from him, and shall have full force and effect as such.*"

II. Had the Secretary power to make this compromise?

1st. This must depend either on his general powers as Secretary, or on some special power conferred in the premises.

The act of April 30, 1798, § 1, 1 Stat., 553, provides:

"There shall be an executive department, under the denomination of the Department of the Navy, the chief officer of which shall be called the Secretary of the Navy, whose duty it shall be to execute such orders as he shall receive from the President of the United States, *relative to the procurement of naval stores and materials, and the construction, armament, equipment, and employment of vessels of war, as well as all other matters connected with the naval establishment of the United States.*"

These duties, in most instances, are executive, and involve judgment and discretion, and are not subject in those instances to either judicial control or review.

Decatur *vs.* Paulding, 14 Peters, 515.
Brashear *vs.* Mason, 6 How., 92.
United States *vs.* Guthrie, 17 How., 304.
Ex parte DeGroot, 6 Wall., 497.

The President exercises his various executive duties and functions principally through the Departments, and they are deemed his acts.

United States *vs.* Eliason, 16 Peters, 291.
Wilcox *vs.* Jackson, 13 Peters, 498.
United States *vs.* Cutter, 2 Curt., 617.
Williams *vs.* United States, 1 How., 290.

The contracts under which this contest arose came clearly within the general powers—"The construction, armament, and equipment of vessels of war."

If he had the right to make the contract, why not a right, with consent of the contractor, to rescind it?

The act of July 24, 1861, (12 Stat., 272,) increased during the rebellion the power of the Secretary of the Navy, and conferred upon him almost unlimited discretion, in the purchase, construction, and equipment of ships of war.

"That for and during the present insurrection the Secretary of the Navy shall be, and he is hereby, authorized to hire, purchase, or contract for such vessels as may be necessary for the temporary increase of the navy of the United States, and he is also hereby authorized to furnish any vessel or vessels which may be purchased or contracted for, with such ordnance, ordnance stores and munitions of war as may be necessary to enable such vessel or vessels to render the most efficient service," &c.

So the appropriations made by Congress during the war of vast sums, were made in the most comprehensive and general terms, and conferred the largest and widest discretion.

See act April 17, 1862, (12 Stat., 380–81,) To enable the Secretary of the Navy to construct iron-clad steam vessels of war, thirteen million of dollars.

Act February 13, 1862, (12 Stat., 338,) ten millions.

Act 14th July, 1862, (12 Stat., 561, '2,) fourteen millions.

Act March 3, 1863, (12 Stat., 1863,) over thirty millions, in same general way.

Act May 21, 1864, (13 Stat., 80,) fifty-two millions eight hundred thousand dollars.

These are but a few selected from a vast number.

The position assumed is that the Secretary of the Navy had no power or authority to make the settlement and compromise, and that his act, in this regard, does not bind the United States.

That is that the Secretary of the Navy, under the law, had full power to make these contracts according to his own unrestricted judgment and discretion; that he could increase, alter, suspend, or extend them, at his own will. It is not denied, he could wholly stop work under them; that

he could do everything else but determine what was the state of the account between the United States and the contractor. It is true, the Navy Department alone furnished the full, necessary, detailed information to make such a settlement and adjustment. There was neither matter of fact, nor of law, in dispute between it and the contractor. They were perfectly agreed as to the amount of work done, and the prices agreed upon under the contract. They were agreed that it was for the interest of the United States; that no more expense should be incurred for work then entirely useless.

There was mutual consent that the contracts should be canceled and given up. It was perfectly understood that the work, in its unfinished state, should be surrendered by the claimant and delivered over to the United States. It is an admitted fact, that the claimant, at a cost of forty-five thousand dollars, did transport and deliver this work at the place appointed. It is a part of the case, that the United States received it and have kept it until this hour, and have never so much as intimated even a readiness to return it, or reinstate the canceled contracts.

Then all we have in this case is large and expensive contracts in course of performance. The certainty that in the changed circumstances of the country, every dollar put into the work would be a dead loss to the United States. A full detailed survey of the work, made and reported by officers of the Department. Every fact known, and considered, and acted upon. An offer of settlement and compromise made by claimant. A full and careful consideration of this offer by the Department. The acceptance of it by the Department, on conditions: 1st. Of surrender of its contracts; 2d. Delivery of the work, at an expense of forty-five thousand dollars, at the Charlestown navy yard. The conditions are accepted, and faithfully, and promptly performed. And the Department certifies the amount due.

The Court of Claims sums it all up in a few words:

"*There is no allegation that the Department was ignorant of the facts of the case, or that the claimant was guilty of any fraud, misrepresentation or other wrong; but, on the contrary, it is singularly clear and unquestionable that every fact was known to both parties, and that the whole transaction was unaffected by taint or infirmity.*"

Record, p. 16.

Against the re-opening of such settlements and compromises, this Court has set its face like flint.

See Adams Case, 7 Wall., 463.
Child, Pratt & Fox, 12 Wall., 232.
Clyde *vs.* United States, 13 *Id.*, 35.

Do these compromises bind the claimants only? Or is it not because they are mutually binding that they are binding at all? If these officers have power to make settlements and compromises which bind claimants, why not such as bind the United States as well? A compromise or settlement which binds only one of the parties to it, is an absurdity and solecism. It must bind both or neither.

If the Government seeks to rescind this agreement, it could only do so by putting the claimant in *statu quo*.

That involves—

1st. The restoration of the contracts given up and cancelled.

2d. The return of the machinery delivered over to the United States.

3d. The payment of interest and damages for the loss and delay.

Penn *vs.* Lord Baltimore, 1 Vesey, Sen., 444.
Union Bank of Georgetown *vs.* Geary, 5 Peters, 115.
Chitty on Contracts, 9th Am. Ed., 42 and notes.

II. The compromise and settlement were eminently fair and just so far as the United States were concerned. The contracts provided that the work was to be completed and erected in the ships in one year from their date. The claimants had every facility and means to perform within the time. But the United States, by delays and procrastinations, kept the work on hands four years and a half longer; and this, too, at immense loss to the claimants. But they neither claimed nor received any allowance for damages. They only claimed and only received what was due them under the contracts, at contract rates.

This is demonstrated from the facts in the case.

Amount of work estimated and allowed for under the contracts by the engineer in charge	$1,032,000 00	
Amount paid	860,000 00	
16⅔ per cent. retained		$172,000 00
Transportation to Charlestown		45,000 00
Extra work estimated and allowed by the engineer		19,068 40
Additional extra work claimed and allowed in the settlement		23,000 00
		$259,068 40
Deduct for tubes included in estimate, but not delivered		1,380 40
Amount of settlement		$257,688 00

III. My friends on the other side assume that the suspension of the work by the United States was a breach of the contracts, and that it worked a rescission of them; and that the amount allowed by the Secretary of the Navy to the claimants was for unliquidated damages for this breach and rescission of the contracts.

There is not a circumstance or fact in the case that supports or sustains such an assumption. Every dollar allowed in the certificate was for work done under the contracts, at the contract rates.

But, if the facts were as assumed, it would not vitiate the settlement and compromise, in the absence of concealment, fraud or misrepresentation.

This power of settlement and compromise is necessarily exercised every day by the heads of Departments.

For instance, the Secretary of War has contracted for definite quantities of supplies and transportation for a stated time, to a distant military post. The public exigencies require, while these contracts are in life, that the post shall be discontinued and the troops removed.

The contractor has engaged his supplies and procured his means of transportation. Both are left on his hands. The United States is liable for the damage sustained. May not the Secretary of War, who is in full possession of all the facts, compromise and arrange with the contractor, upon the consideration that the other will surrender and agree to rescind his contracts?

So the Postmaster General is often compelled to discontinue the postal service on stage routes, where the completion of a railroad gives quicker and better facilities. It is matter of public notoriety and history that in all such instances, wherever he can, he procures the surrender of the contracts on the best terms of compromise and settlement he can make.

The Secretary of the Treasury almost daily compromises and compounds with parties who are charged with defrauding the customs and excise.

The Department of Justice is constantly compromising and settling suits on official bonds of officers and their sureties.

These are all unliquidated and unsettled matters. And, if they are sanctioned by the long usage of every Executive

Department of the Government, and are upheld by the courts as being greatly to the public interest, honor, and credit, I cannot for the life of me perceive why the case at bar should be made an exception.

REPLY.

I. The Assignment of Error is not Sustained by the Record.

All of the evidence offered by the United States was received by the Court. Even the *exparte* proceedings, by Congress, by the Department, and by the board of officers appointed after the settlement and compromise, was consummated.

The Court was not requested to find, as a fact, that the settlement and compromise was for an amount in excess of that due.

But they were requested to find that two boards of naval officers, after the settlement was complete, the work delivered to the United States, and the contracts given up, *without notice to the claimants*, pretended to have re-examined the work, and gave it as their opinion that the compromise was for more than was due for work done under the contracts.

See pp. 16, 17, and 18 of Record.

The Court of Claims was clearly right in holding the findings requested immaterial—

1st. Because it was not the finding of any *ultimate* fact in the cause, as required by the rules of this Court.

2d. It was immaterial, because it requested the evidence to be found and returned to this Court, instead of the *ultimate* facts established by the evidence.

3d. It was immaterial, because the evidence recited in the request was incompetent to establish the fact that the

compromise was for more than was due for work done under the contracts, being *exparte* and after the settlement, and merely the opinion of these officers, not given under oath.

4th. It was immaterial, because it was incompetent to prove either fraud or gross mistake in the compromise, and had no tendency to prove either.

5th. That this *exparte* evidence, requested to be returned to this Court, was not evidence for any purpose against the claimants.

6th. The request was immaterial, because it did not pretend that if found as requested it would have shown any fraud, concealment, or misrepresentation in the making or procuring of the settlement and compromise.

II. Mr. Solicitor General assumes in his brief that if the Court had added the findings requested by the United States, they would have shown that the compromise and settlement was for $100,000, or more, in excess of the amount due for work and material, and that this excess was for unliquidated damages.

All this evidence was before the Court of Claims. It was considered by it in finding the ultimate facts. Those findings are singularly clear and definite that the settlement and compromise were made with the greatest care; that the minutest details were before the parties, and considered by them; and that the whole case was free from the slightest "taint or infirmity."

It is well summed up in the opinion of that Court. (Record, p. 16:)

"There is no allegation that the Department was ignorant of the facts of the case, or that the claimant was guilty of any fraud, misrepresentation, or other wrong, but, on the contrary, it is singularly clear and unquestionable that every fact was known to both parties, and that the whole trans-

action was unaffected by taint or infirmity. If such a settlement, accompanied by the giving up by one, and the taking possession by the other, of the property involved, cannot be judicially maintained, it would seem that no settlement by any contractor with the Government can be considered a finality against the Government. If the Government may causelessly set aside such a settlement, why may not the claimant? Would an action here by the claimant for more than the amount stipulated in that certificate be entertained for a moment, unless it could impeach the settlement for fraud or mistake of fact? And if it would not be heard in such an action, why should the Government be allowed to repudiate its own contract, and demand that the company take less than the agreed amount? When the Government assumes the position of a contractor with a citizen, it comes under all the obligations and liabilities of an individual, and must abide by its own acts and agreements, with the added obligation, because it is a government, and more powerful than any individual, to deal with the individual in the strictest fairness and justice. It is to hold the Government to its contracts with the citizen, and to give the latter full redress for any breach of such contracts, that this court was established."

It is admitted the Secretary of the Navy might have made the settlement and compromise, if he had fixed it, "*within the limits that a jury might have done.*"

Surely this admits away the whole case. If he had power and authority in the premises at all, his discretion, after being exercised, and the arrangement consummated by acceptance and performance by the other party, could not be set aside except for fraud or mistake of fact. But even a jury might not concur in opinion with the *ex parte* and hasty opinions of these naval officers. What, then, must that be set aside too? And what is to be the ultimate standard for such adjustments?

III. Surely the doctrine of the Brief on the other side, that the claimant in such a case may be bound by an arrangement, and the United States not, cannot be the law.

A compromise or settlement, like an award, must bind both or neither. If the claimant was concluded, so were the United States. This Court says, in Gordon *vs.* The United States, (7 Wall., 195:) "An arbitrament and award which concludes one party only is certainly anomaly in the law." A settlement and compromise which should be obligatory on one party to it, and not on the other, would be equally anomalous.

IV. Another position assumed is that, upon suspension of the work, before completion of the contracts, it became such an unliquidated matter, that it was taken out of the power of the Secretary, and became a matter for adjudication by the Court of Claims. I know of no law or authority which supports such a postulate. In every such case, under the act of June 25, 1868, (15 Stat., p. 75,) the head of a department may, at his discretion, send any case before him, involving disputed facts, or controverted questions of law, to the Court of Claims. That he has a choice of doing so or not shows that he may determine the matter for himself. Besides, this case involved neither disputed facts nor controverted questions of law; and, as I think I have clearly shown, in the former part of this Brief, the compromise and settlement was clearly within the prescribed powers of the Secretary of the Navy.

V. The action of Congress in directing a re-examination of the case, and the deduction of what sum it would have cost to complete the contracts, can have no bearing on the judicial aspects of the case. It may have furnished a rule to the Secretary, but does not bind the claimants or the courts.

By the acceptance of the proposition, the performance of the conditions, the delivery of the work, the surrender of the contracts, the rights and obligations of the parties became fixed and determined.

And it was not competent for either party to cancel those obligations, or divest those rights, without the consent and concurrence of the other. If it were only an account stated, fraud or gross mistake must be shown to open it.

1st. The stating of the account alters the nature of the debt, and is in the nature of a new promise or undertaking.

See 2 Green. Ev., secs. 126, 127, and 129.
1 Chitty's Pleadings, p. 391.

2d. It is an admission made by a party authorized by law that so much was due to claimant.

See Opinion of Att'y Gen'l Bates, 10 Opinions, 62.
Kelly *vs.* Crawford, 5 Wall., 790.

3d. An award made by an arbitrator, where there is no submission bond, may be recovered under this count.

1 Chitty's Pl., p. 391.
1 Esp., 94.
Tidd's Prac., 9th ed., 834.
5 Tenn. Rep., 5.

4th. To open such an account, fraud or mistake must be shown.

Wilcocks *vs.* Phillips, 1 Wall., Jr., 66, 47.
Martin *vs.* Acker, 1 Bl. & H., 279.
Perkins *vs.* Hart, 11 Wheat., 237.
Conrad *vs.* Nicoll, 4 Peters, 295.
Harden *vs.* Gordon, 2 Mass., 541.
See, also, Chitty on Contracts, 566, *et seq.*

VI. IF THIS BE A SETTLEMENT OR COMPROMISE, THEN A STATUTE ATTEMPTING TO IMPAIR OR ANNUL IT WOULD BE UNCONSTITUTIONAL AND VOID.

Cooley on Const. Lim., 284 to 294.
Steamship Co. *vs.* Joliffe, 2 Wall., 450.

Smith's Com. on Const. Law, §§ 149, 366, 368, 375, *et seq.*
Cooley's Const. Lim., 362, 364, and notes.
9 Opin. of Att'y Gen'ls, 206.
Twenty per cent. cases, 20 Wall., 179.
Cooley on Con. Lim., 284, and the numerous authorities there cited. Id., 290, 291, p. 362 and note 3.
Christ Church *vs.* Phila., 24 How., 300.
Salt Co. *vs.* East Saginaw, 13 Wall., 373.
Rice *vs.* Railroad, 1 Black., 358.
State of Pa. *vs.* Wheeling Bridge Co., 18 How., 431.
Terret *vs.* Taylor, 9 Cranch, 50–1.
Pawlet *vs.* Clark, Id. 292.
United States *vs.* Klein, 13 Wall., 144.
2 Sto. on Const., § 1790.
Steamship Co. *vs.* Joliffe, 2 Wall., 450.

VII. The position taken in the face of the findings of the Court of Claims, that there was no consideration for the settlement, cannot be maintained. If it were only a statement of accounts it would be *prima facie* correct. To impeach it fraud or gross mistake would have to be shown. But there was much more here. It was a careful, fixed, deliberate settlement and compromise by the parties. Each one perfectly aware of all the facts. The one agreeing to pay a certain stipulated sum, the other to surrender contracts, to deliver over work and materials, to relinquish the right to sue for damages for nearly five years delay, the loss of interest, twenty-five thousand dollars of insurance paid during the procrastination and delay, the hindrance to other and valuable work, the changes in tools, machinery, interest on the capital, &c. And all these, says my friend, Mr. Solicitor General, furnish no consideration for this compromise. Notwithstanding this I beg to urge them as most valuable considerations. The Secretary of the Navy has so regarded

them, and against all clamor has upheld this settlement, which he deems alike fair to the claimant and honorable to the United States, and that justice and honor alike required that the faith of the nation in this regard should be kept.

This Court upheld the adjustment in the Adams case, where $112,000 was deducted from the claimant; in the Child, Pratt and Fox case, where $163,000 were relinquished, the door was held to be closed by the offer on the one side, and by the acceptance on the other. Here we insist that we only get, by the settlement, the amount of pay we are entitled to under the contracts themselves.

I therefore, with great confidence, ask for the affirmance of this judgment.

Respectfully submitted.

JOSEPH CASEY,
Attorney for Appellee.